

ADA JOAN ROBERTS
Claimant

SALINA RETAILERS ASSOCIATION
Respondent

HARTFORD UNDERWRITERS INSURANCE CO.
Insurance Carrier

The evidence establishes claimant suffered an accidental injury that occurred in the course of her employment, as it occurred while she was at work and in the service of her

employer. The only question is whether the claimant's accidental injury arose out of her employment with respondent.¹

As noted by Judge Moore, the Board has repeatedly held that unexplainable falls or neutral risks occurring in the course of an employee's employment, even though they have no particular employment or personal character, are compensable. In so holding, the Board has followed the majority rule as set out in *Larson's Workers' Compensation Law*.²

Respondent, however, disputes that claimant's fall was unexplained. Instead, respondent contends that it was due to a personal condition which, therefore, renders this claim non-compensable.³ Respondent points to the facts that claimant was diagnosed in 1943 with polio. As a result of that condition, her right ankle has been fused and her right leg is two and three-quarter inches shorter than her left. When she walks, claimant has to "throw [her] entire leg out and lock the knee and then stand down on it."⁴ Sometimes the knee will unlock causing her to fall. Claimant experienced such an accident in 1990 when she fell at home and fractured the same leg.

Claimant testified at the preliminary hearing that her fall was caused by stepping off the floor mat. Although, in her prior recorded statement claimant said she did not know why she fell. Furthermore, claimant does not say that she tripped or that the floor mat was defective. She was simply walking when she fell. However, due to claimant's condition even a slight elevation of her heel can cause her knee to unlock. Claimant told her daughter at the hospital emergency room that this is what she thought had happened.

If claimant lost control of her right leg due to a personal condition and not due to a risk or hazard associated with the employment, the claim is not compensable.⁵ The facts establish that claimant's fall was likely due to a personal condition unrelated to her work activities. Furthermore, the concrete floor and hard plastic floor mat should not be construed as hazards that increased her risk of injury. As such, her injury is not compensable and the ALJ's award of benefits should be reversed.

¹ See K.S.A. 44-501(a).

² 1 *Larson's Workers' Compensation Law* § 7.04[1] (2004).

³ See *Rogers v. Wal-Mart*, No. 233,965, 2000 WL 759362 (Kan. WCAB May 31, 2000).

⁴ P.H. Trans. at 24.

⁵ See *Bennett v. Wichita Fence Co.*, 16 Kan. App. 2d 458, 824 P.2d 1001, rev. denied 250 Kan. 804 (1992).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Bruce E. Moore dated May 4, 2004, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of November 2004.

BOARD MEMBER

c: Dale E. Bennett, Attorney for Claimant
Matthew J. Schaefer, Attorney for Respondent and Hartford Underwriters Ins. Co.
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director